IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 559 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SURESH NEOTIA, CHAIRMAN GUJARAT AMBUJA CEMENTS LTD.

Versus

STATE OF GUJARAT

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Appearance:

MR HARIN P RAVAL for Petitioners

Mr.K.C.Shah, A.P.P. for Respondent No. 1

NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/09/2000

ORAL JUDGEMENT

1. The order dated 30.9.1997 passed by the Chief Judicial Magistrate, Vadodara, under Section 245(2) Cr.P.C. is under challenge in this Revision.

2. List has been revised four times, but out of 12 revisionists none is present nor their counsel reported at any of the four calls when the list was revised four times. Shri K.C.Shah, learned A.P.P. for the respondent No.1 has been heard. The respondent No.2, representing as Constituted Attorney of four persons, who has appeared and argued in person, has been heard. The impugned order has been examined.

3. It appears from the record that a complaint was filed against the revisionist u/s. 420 and 114 of Indian Penal Code. Cognizance was taken by the concerned Court by accepting the complaint and after completing the formalities of recording the statement of the complainant and other witnesses process was issued against the revisionist. This was done after finding prima facie material to proceed against the revisionist. The order issuing process against the revisionist was challenged before this Court in a petition u/s. 482 Cr.P.C. which was ultimately dismissed by this Court. Direction was given by this Court to the revisionist to appear before the trial Court. In compliance of this direction the revisionist appeared before the trial Court and moved an application u/s.245(2) Cr.P.C. inter-alia pleading that cognizance of the complaint cannot be taken on the grounds mentioned thereunder. It was specifically contended that no prima facie case u/s.420 I.P.Code was made out inasmuch as it was a dispute regarding non-issuance of equity share and debentures which was in the nature of civil dispute for which the complainant should have approached the Civil Court. This stand of the revisionist was turned down by the Chief Judicial Magistrate, Vadodara, through the impugned order observing that the action u/s.245(2) Cr.P.C. cannot be taken because the complainant and witnesses have not been examined on oath. As such at that stage the application was rejected hence this revision.

4. From the impugned order it appears that Chief Judicial Magistrate was guided by the fact that it is to be decided by him whether prima facie any offence is committed by the revisionist or not and without examining the complainant decision on this point could not be taken at that stage. Accordingly this application was rejected.

5. Section 245 has two provisions, Sub-Section (1) makes provision for discharge of the accused when the Magistrate after collecting the prosecution evidence u/s.245 Cr.P.C. considers for reasons to be recorded that no case against the accused has been made out which, if

unrebutted would warrant his conviction. Sub-Section 2 of Section 245 however empowers a Magistrate to discharge the accused at any previous stage of the case if for reasons to be recorded by such Magistrate he considers the charge to be groundless. To be more accurate Section 245(2) can be quoted as under :

> "Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

Thus, under this section a Magistrate is empowered to discharge all accused even before the stage u/s.244 Cr.P.C. is reached, but while doing so the Magistrate has to record reasons that he considers the charge to be groundless. Under the impugned order the learned Chief Judicial Magistrate has not recorded any reason that he considered the charge to be groundless. On the other hand he has observed that there was prima facie material for proceeding against the accused, namely, the revisionist and for that reason he proceeded against them. He also made reference to the proceeding u/s.482 Cr.P.C. initiated by the revisionist which ultimately failed. If these considerations were in the mind of the Chief Judicial Magistrate it can safely be inferred that he did not consider the charge to be groundless and as such he was justified in rejecting the request of the revisionist u/s.245(2) Cr.P.C.

6. If for a moment it is believed that mere incorrect mention of section should not stand in the way of administration of justice it can be said that even Section 245(1) Cr.P.C. did not apply. The Chief Judicial Magistrate has observed that the statements of the complainant and his witnesses have not been recorded, meaning thereby that he was of the opinion that the evidence of the prosecution contemplated under Section 244 Cr.P.C. was not recorded and as such he could not discharge the accused, namely, the revisionist. The order may not be happily worded and it may not be strictly in accordance with the provisions of Section 245(1) or 245(2) Cr.P.C., but for all purposes it could be inferred that the learned Chief Judicial Magistrate was of the view that the discharge was not permissible on the facts and circumstances of the case either under Sub-section 1 or under Sub-Section 2 of Section 245 Cr.P.C. In doing so he committed no illegality. The impugned order, therefore, requires no interference.

7. The revision has thus no substance. It accordingly requires to be dismissed and is hereby dismissed.

sd/-

Date : September 26, 2000 ( D. C. Srivastava, J. )

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